

Message

From: Wildeman, Anna [wildeman.anna@epa.gov]
Sent: 2/15/2019 1:40:55 PM
To: Ross, David P [ross.davidp@epa.gov]
Subject: Fwd: Star Tribune (Minnesota): Former EPA lawyer challenges regulators on PolyMet water permit

Attorney Client / Ex. 5

Begin forwarded message:

From: "Dennis, Allison" <Dennis.Allison@epa.gov>
Date: February 7, 2019 at 4:58:09 PM EST
To: "Ross, David P" <ross.davidp@epa.gov>, "Wildeman, Anna" <wildeman.anna@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Kramer, Jessica L." <kramer.jessical@epa.gov>, "McDonough, Owen" <mcdonough.owen@epa.gov>
Subject: **Star Tribune (Minnesota): Former EPA lawyer challenges regulators on PolyMet water permit**

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Star Tribune (Minnesota): Former EPA lawyer challenges regulators on PolyMet water permit

<http://www.startribune.com/regulators-challenged-on-polymet-water-permit/505466782/>

By Jennifer Bjorhus, FEBRUARY 6, 2019 — 11:18PM

A retired attorney with the U.S. Environmental Protection Agency (EPA) has requested an internal investigation into the agency's handling of a water-quality permit in Minnesota for PolyMet Mining, saying career staffers in the Chicago office may have been muzzled to clear the permit.

The EPA's Chicago office effectively cleared the Minnesota Pollution Control Agency (MPCA) to issue the permit in December, one of the final state regulatory hurdles for PolyMet's proposed \$1 billion copper-nickel mine in northeastern Minnesota.

"There's enough smoke here that they ought to be seeing if there's a fire," the attorney, Jeffery Fowley, said in an interview.

In a letter to the EPA's inspector general, Fowley, a retired water attorney for agency's Boston office, said he had information from several sources that the head of the Region 5 office "suppressed" written comments from her staff about whether Minnesota was complying with basic federal requirements for the PolyMet permit. He said that "significant EPA concerns" about the permit were improperly discussed over the telephone, and so hidden from the public. As a result, he said, the EPA "failed to meet its basic oversight responsibilities."

Fowley's letter also asserts that last March, Cathy Stepp, head of the Region 5 office, directed her staff not to send written comments to Minnesota on the permit following a phone call from John Linc Stine, then head of the MPCA, in which Stine "complained about the planned comments."

Stepp, a Wisconsin businesswoman and cabinet official under Gov. Scott Walker, was named Region 5 administrator by the Trump administration in December 2017.

Untapped ore

Minnesota's Iron Range is home to one of the world's largest untapped reserves of copper- and nickel-bearing ore, which has sparked interest from several multinational mining concerns, including PolyMet Mining Corp. and Twin Metals Minnesota LLC.

The resulting water permit has been challenged by a Minnesota advocacy group, WaterLegacy, over its lack of stringent, federally enforceable limits on nearly two dozen pollutants that are regulated by the Clean Water Act.

Officials in the EPA's Chicago office declined to discuss the permit specifically, but a spokeswoman issued a statement saying agency staff thoroughly reviewed the PolyMet project in several meetings and conversations with Minnesota regulators and decided not to issue formal written comments because their concerns were addressed along the way.

"EPA leadership in no way limited EPA staff's ability to openly share all questions and/or concerns with their counterparts at MPCA," the statement said. "All significant concerns, observations or questions ... regarding the PolyMet permit were communicated to MPCA."

In Minnesota, Shannon Lotthammer, the MPCA's assistant commissioner for water policy, said in a statement that EPA's comments were delivered in multiple phone calls and meetings, including an in-person meeting in St. Paul. Minnesota staff, she said, made changes to the permit based on those comments.

"The Minnesota Pollution Control Agency did not, at any time, ask EPA to suppress or withhold comments on the PolyMet [water] permit," Lotthammer said.

An MPCA spokesman said the agency is confident it addressed all the EPA's comments before the permit was issued. "This is supported by the fact EPA did not comment on the proposed permit during their final review period," said spokesman Dave Verhasselt.

In an interview, former MPCA Commissioner Stine said he and the head of Region 5 spoke on the phone about PolyMet several times but that he never complained about planned comments. Stine said he has "no idea" why the EPA never filed formal written comments on the permit. The lack of written comments is "pretty routine," he said.

McCollum steps in

WaterLegacy, in addition to challenging the content of the PolyMet water permit, has raised concerns about transparency at the EPA. In a Jan. 15 letter to Rep. Betty McCollum, and two other members of Congress, the group's advocacy director, Paula Maccabee, said she was unable to get the written comments from EPA's Chicago office through a Freedom of Information Act request and asked for lawmakers' help.

"We have reason to believe that EPA Region 5 staff prepared final written comments on the draft ... permit, but that they were directed by someone within the Agency not to provide those comments to Minnesota regulators in a written form accessible to the public," Maccabee wrote.

The Star Tribune has also filed a Freedom of Information Act request with the EPA.

E-mails and meeting notes taken by MPCA staffers, obtained by Maccabee and the Star Tribune, show the EPA staff repeatedly expressing concern that the PolyMet permit lacked stringent federal pollution limits, known as water quality-based effluent limits, or WQBELs.

A handwritten note by one of the Minnesota regulators, dated Oct. 22, shows that the EPA planned to do a final review of the permit and that “EPA will focus review on proposed language re: WQBELs.”

An MPCA e-mail dated Dec. 17, says: “We did not get any feedback from EPA on the PolyMet permit.”

On Tuesday, a spokeswoman for McCollum said the Minnesota Democrat is asking the EPA to release any PolyMet-related comments drafted by its staff.

“The PolyMet copper-nickel mine project has the potential to significantly damage water quality affecting surrounding communities, the Fond du Lac Tribal Nation, and the Lake Superior watershed,” McCollum said in a statement responding to Maccabee’s letter. “It is remarkable that the EPA did not comment before the issuance of water pollution permits by the State of Minnesota.”

‘Radio silence’

PolyMet’s proposed mine would use a taconite site formerly operated by LTV Steel Corp. near Hoyt Lakes, upstream from the Fond du Lac Reservation, whose officials have followed the permitting process closely. Nancy Schuldt, the tribe’s water projects coordinator, declined to comment on concerns about the EPA staff comments.

However, Schuldt said the tribe has written to EPA Region 5 twice since October requesting due process under the federal Clean Water Act and been met with “radio silence.” They are writing a third request, she said.

The controversy has also drawn the attention of the Environmental Integrity Project, a nonprofit watchdog in Washington, D.C., because of the size of the PolyMet project and the importance of rigorous EPA permitting, said the group’s director, Eric Schaeffer, a former EPA official.

Schaeffer said he’s seen Fowley’s request for an internal investigation. The situation “seems weird,” he said, and justifies an inquiry by the EPA inspector general.

“There are some things that can only come from interviewing staff,” Schaeffer said. “There is definite cause for concern if the permit doesn’t meet federal standards.”

Sent from my iPhone